IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 77 of 1996
To
FIRST APPEAL No. 79 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANESHBHAI JAGASIBHAI RABARI - Appellant(s)
Versus
RUDIBEN JIVRAJBHAI PATEL & 1 - Defendant(s)

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Appearance :
MR CHIRAYU A MEHTA for Appellant(s) : 1,
UNSERVED-EXPIRED (N) for Defendant(s) : 1,
None for Defendant(s) : 1.2.1,1.2.2
MR RR MARSHALL for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/02/2007

ORAL COMMON JUDGMENT :

Original claimants have approached this Court under section 173

of the Motor Vehicles Act [hereinafter referred to as 'the Act'] to challenge the judgment and award dated 4/8/1995 made by the Motor Accident Claims Tribunal [Main], Mehsana in M.A.C. Petitions No. 1073/1987, 1072/1987 and 1084/1987. The Tribunal has dismissed the claims of the appellants.

2. The accident in question took place on 6/10/1986. They were travelling in a tractor bearing registration No. GAE 7870, to which a trolley bearing registration No. GRO 3200 was attached. They were transporting cumin seeds belonging to their master to Unjha Marketing Yard. It was 6.00 O'clock in the morning. According to them, when they reached near Khali Cross Roads, a truck came from behind and violently dashed against the tractor. Due to the impact, the tractor toppled down and the appellants received serious injuries. They were shifted to Civil Hospital at Unjha and from there Mehsana Civil Hospital. They were treated as indoor patients. According to them, the accident occurred due to negligent driving of the driver of the truck.

2.1. The appellants preferred petitions under the provisions of the Act to obtain compensation. Strangely enough they did not join driver, owner and insurance company of the truck and merely joined the driver, owner as also the insurance company of the tractor as opponents.

2.2. During the course of hearing before the Tribunal, the appellants gave a slight twist to the entire episode and they alleged that it was driver of tractor who was negligent and due to his negligence and rashness the accident

occurred.

2.3. The Tribunal, on the basis of the material produced before it, including the oral evidence, held that the claimants had failed to prove the negligence of respondent no. 1. Hence, it dismissed all the three claim petitions.

3. It is submitted by Mr. Chirayu Mehta that there was reliable and cogent evidence on record to show that it was the driver of the tractor who was driving the vehicle in a rash and negligent manner. According to him, merely because at initial stage, some averments alleging the negligence on the part of the driver of the truck are made, that would not mean that the substantive evidence which is given on oath and which has stood the test of cross-examination can be discarded. He has submitted that the claimants had received serious injuries for which they were entitled to receive compensation. He has, therefore, submitted that the judgment and award of the Tribunal be quashed and set aside and the appellants be awarded just and proper compensation.

3.1. The owner and the driver of the tractor though served, have not appeared. They are one and the same persons. He has expired during the pendency of the proceedings and his heirs have been brought on record. They have also chosen not to appear.

3.2. Mr. Adil Mirza, learned advocate for Mr. RR Marshall for the

insurance company has supported the judgment of the Tribunal and has submitted that the appellants had tried to plead altogether new case in evidence and that has rightly been discarded by the Tribunal. According to him, these appeals deserve to be dismissed.

4. Having carefully considered the submissions of the learned advocates for the parties and also having closely perused record of the appeals, it clearly appears that initially the case of the appellants was that it was the driver of the truck who was responsible for causing the accident. According to them, the driver of the truck drove the vehicle in rash and negligent manner and dashed his vehicle against the tractor, due to which the tractor turned turtled causing injuries to the appellants. It is obvious that the appellants did not have any details about truck which caused the accident and, therefore, they did not join the driver, owner and insurance company of the truck in the proceedings before the Tribunal. It also appears from the record that even the FIR was lodged against the driver of the unknown truck. It is registered at C.R. No. 311/1986 at Sidhdhpur Police Station. In the FIR same story has been stated. The appellants have tried to give explanation as to why they initially threw the blame on truck driver. According to them, they were in injured condition and did not in proper state of mind to narrate the correct fact. Mr. Mehta has, of-course tried to point out from the evidence that due to rashness and negligence of driver of the tractor the accident occurred. Such evidence, however, does not

inspire confidence in the Court. The Tribunal has already rejected such evidence and in my opinion, rightly so. When this is the state of affairs, I do not see any reason to accept the pleas advanced by appellants in these appeals. In short, these appeals do not have any merit and they deserve to be dismissed and they are hereby dismissed with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.